

HOUSE BILL 549

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2003 Regular Session
(3r1414)

ENROLLED BILL
-- Economic Matters/Judicial Proceedings --

Introduced by **Delegates Feldman, Barve, and Taylor**

Read and Examined by Proofreaders:

Proofreader.

Proofreader.

Sealed with the Great Seal and presented to the Governor, for his approval this
____ day of _____ at _____ o'clock, ____ M.

Speaker.

CHAPTER _____

1 AN ACT concerning

2 **Corporations - Directors and Stockholders - Meetings, Notices, and**
3 **Consents**

4 FOR the purpose of providing that certain actions by the board of directors of a
5 Maryland corporation, a committee of the board, or the stockholders of the
6 corporation may be taken by a certain consent given in writing or by electronic
7 transmission and filed in paper or electronic form in certain locations; providing
8 that certain meetings of the board of directors of a Maryland corporation may be
9 held by means of remote communication; providing that certain meeting notices
10 may be delivered to the directors and the stockholders of a Maryland corporation
11 by electronic transmission; prohibiting a corporation from providing certain
12 notice to a stockholder by electronic transmission under certain circumstances;
13 authorizing certain persons to waive notice of certain meetings of directors or
14 stockholders by delivering a written waiver or a waiver by electronic
15 transmission; expanding the types of communications equipment that may be
16 used by directors and stockholders of a Maryland corporation to hold certain
17 meetings of directors and stockholders; providing that the board of directors of a

1 Maryland corporation under certain circumstances has the sole power to
2 determine the means of remote communication by which stockholders and proxy
3 holders may be considered present in person and may vote at a special meeting
4 of stockholders; authorizing the charter of a Maryland corporation to provide for
5 the place of stockholders meetings or to provide that the board of directors may
6 determine the place of stockholders meetings; authorizing the board of directors
7 of a Maryland corporation under certain circumstances to determine that
8 meetings of stockholders shall be held by means of remote communication;
9 requiring the board of directors of a Maryland corporation to provide a place for
10 a meeting of stockholders under certain circumstances; authorizing stockholders
11 and proxy holders under certain circumstances to participate in, be considered
12 present at, and vote at certain stockholders meetings held by means of remote
13 communication; requiring stockholders meeting notices to contain certain
14 information with respect to meetings held by means of remote communication;
15 providing that a notice of a stockholders meeting is considered given to a
16 stockholder when it is transmitted to the stockholder by an electronic
17 transmission to a certain address or number; establishing when certain notice
18 given by electronic transmission shall be considered ineffective; providing that
19 notice given by a corporation to a stockholder is effective if given by a single
20 notice, in writing or by electronic transmission, to all stockholders who share an
21 address under certain circumstances; authorizing certain stockholders to take
22 action or consent to any action by delivering consent in writing or by electronic
23 transmission under certain circumstances; defining a certain term; making
24 certain stylistic changes; and generally relating to directors and stockholders of
25 Maryland corporations.

26 BY repealing and reenacting, without amendments,
27 Article - Corporations and Associations
28 Section 1-101(a)
29 Annotated Code of Maryland
30 (1999 Replacement Volume and 2002 Supplement)

31 BY adding to
32 Article - Corporations and Associations
33 Section 1-101(k-1) and 2-504.1
34 Annotated Code of Maryland
35 (1999 Replacement Volume and 2002 Supplement)

36 BY repealing and reenacting, with amendments,
37 Article - Corporations and Associations
38 Section 2-408(c), 2-409, 2-502(e), 2-502.1(a), 2-503, 2-504, and 2-505
39 Annotated Code of Maryland
40 (1999 Replacement Volume and 2002 Supplement)

41 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
42 MARYLAND, That the Laws of Maryland read as follows:

1 **Article - Corporations and Associations**

2 1-101.

3 (a) In this article, unless the context clearly requires otherwise, the following
4 words have the meanings indicated.

5 (K-1) "ELECTRONIC TRANSMISSION" MEANS ANY FORM OF COMMUNICATION,
6 NOT DIRECTLY INVOLVING THE PHYSICAL TRANSMISSION OF PAPER, THAT CREATES
7 A RECORD THAT:

8 (1) MAY BE RETAINED, RETRIEVED, AND REVIEWED BY A RECIPIENT OF
9 THE COMMUNICATION; AND

10 (2) MAY BE REPRODUCED DIRECTLY IN PAPER FORM BY A RECIPIENT
11 THROUGH AN AUTOMATED PROCESS.

12 2-408.

13 (c) Any action required or permitted to be taken at a meeting of the board of
14 directors or of a committee of the board may be taken without a meeting[,] if a
15 unanimous [written] consent which sets forth the action is:

16 (1) [Signed] GIVEN IN WRITING OR BY ELECTRONIC TRANSMISSION by
17 each member of the board or committee; and

18 (2) Filed IN PAPER OR ELECTRONIC FORM with the minutes of
19 proceedings of the board or committee.

20 2-409.

21 (a) Unless the bylaws of the corporation provide otherwise, a regular or
22 special meeting of the board of directors may be held at any place in or out of the
23 State OR BY MEANS OF REMOTE COMMUNICATION.

24 (b) (1) Notice of each meeting of the board of directors shall be given as
25 provided in the bylaws.

26 (2) Unless the bylaws provide otherwise, the notice:

27 (i) Shall be in writing OR DELIVERED BY ELECTRONIC
28 TRANSMISSION; and

29 (ii) Need not state the business to be transacted at or the purpose of
30 any regular or special meeting of the board of directors.

31 (c) Whenever this article or the charter or bylaws of a corporation require
32 notice of the time, place, or purpose of a meeting of the board of directors or a
33 committee of the board, [each] A person who is entitled to the notice waives notice if
34 [he] THE PERSON:

1 (1) Before or after the meeting [signs a] DELIVERS A WRITTEN waiver
2 OR A WAIVER BY ELECTRONIC TRANSMISSION [of the notice] which is filed with the
3 records of the meeting; or

4 (2) Is present at the meeting.

5 (d) (1) Unless restricted by the charter or bylaws of the corporation,
6 members of the board of directors or a committee of the board may participate in a
7 meeting by means of a conference telephone or [similar] OTHER communications
8 equipment if all persons participating in the meeting can hear each other at the same
9 time.

10 (2) Participation in a meeting by these means constitutes presence in
11 person at the meeting.

12 2-502.

13 (e) The board of directors has the sole power to fix:

14 (1) The record date for determining stockholders entitled to request a
15 special meeting of the stockholders and the record date for determining stockholders
16 entitled to notice of and to vote at the special meeting; and

17 (2) The date, time, and place, IF ANY, AND THE MEANS OF REMOTE
18 COMMUNICATION, IF ANY, BY WHICH STOCKHOLDERS AND PROXY HOLDERS MAY BE
19 CONSIDERED PRESENT IN PERSON AND MAY VOTE AT [of] the special meeting.

20 2-502.1.

21 (a) Unless restricted by the charter or bylaws of the corporation, a corporation
22 may allow stockholders to participate in a meeting by means of a conference
23 telephone or [similar] OTHER communications equipment if all persons participating
24 in the meeting can hear each other at the same time.

25 2-503.

26 (A) Unless the charter provides otherwise, meetings of stockholders shall be
27 held as is:

28 (1) Provided in the CHARTER OR bylaws; or

29 (2) Set by the board of directors under the provisions of the CHARTER OR
30 bylaws.

31 (B) (1) SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, IF THE BOARD OF
32 DIRECTORS IS AUTHORIZED TO DETERMINE THE PLACE OF A MEETING OF THE
33 STOCKHOLDERS, THE BOARD MAY DETERMINE THAT THE MEETING NOT BE HELD AT
34 ANY PLACE, BUT INSTEAD MAY BE HELD SOLELY BY MEANS OF REMOTE
35 COMMUNICATION, AS AUTHORIZED BY SUBSECTION (C) OF THIS SECTION.

1 (2) AT THE REQUEST OF A STOCKHOLDER, THE BOARD OF DIRECTORS
2 SHALL PROVIDE A PLACE FOR A MEETING OF THE STOCKHOLDERS.

3 (C) IF AUTHORIZED BY THE BOARD OF DIRECTORS AND SUBJECT TO ANY
4 GUIDELINES AND PROCEDURES THAT THE BOARD ADOPTS, STOCKHOLDERS AND
5 PROXY HOLDERS NOT PHYSICALLY PRESENT AT A MEETING OF THE STOCKHOLDERS,
6 BY MEANS OF REMOTE COMMUNICATION:

7 (1) MAY PARTICIPATE IN THE MEETING OF THE STOCKHOLDERS; AND

8 (2) MAY BE CONSIDERED PRESENT IN PERSON AND MAY VOTE AT THE
9 MEETING OF THE STOCKHOLDERS, WHETHER THE MEETING IS HELD AT A
10 DESIGNATED PLACE OR SOLELY BY MEANS OF REMOTE COMMUNICATION, IF:

11 (I) THE CORPORATION IMPLEMENTS REASONABLE MEASURES TO
12 VERIFY THAT EACH PERSON CONSIDERED PRESENT AND AUTHORIZED TO VOTE AT
13 THE MEETING BY MEANS OF REMOTE COMMUNICATION IS A STOCKHOLDER OR
14 PROXY HOLDER;

15 (II) THE CORPORATION IMPLEMENTS REASONABLE MEASURES TO
16 PROVIDE THE STOCKHOLDERS AND PROXY HOLDERS A REASONABLE OPPORTUNITY
17 TO PARTICIPATE IN THE MEETING AND TO VOTE ON MATTERS SUBMITTED TO THE
18 STOCKHOLDERS, INCLUDING AN OPPORTUNITY TO READ OR HEAR THE
19 PROCEEDINGS OF THE MEETING SUBSTANTIALLY CONCURRENTLY WITH THE
20 PROCEEDINGS; AND

21 (III) IN THE EVENT ANY STOCKHOLDER OR PROXY HOLDER VOTES
22 OR TAKES OTHER ACTION AT THE MEETING BY MEANS OF REMOTE
23 COMMUNICATION, A RECORD OF THE VOTE OR OTHER ACTION IS MAINTAINED BY
24 THE CORPORATION.

25 2-504.

26 (a) Not less than 10 nor more than 90 days before each stockholders' meeting,
27 the secretary of the corporation shall give [written] notice IN WRITING OR BY
28 ELECTRONIC TRANSMISSION of the meeting to:

29 (1) Each stockholder entitled to vote at the meeting; and

30 (2) Each other stockholder entitled to notice of the meeting.

31 (b) The notice shall state:

32 (1) The time OF THE MEETING, [and] THE place of the meeting, IF ANY,
33 AND THE MEANS OF REMOTE COMMUNICATION, IF ANY, BY WHICH STOCKHOLDERS
34 AND PROXY HOLDERS MAY BE DEEMED TO BE PRESENT IN PERSON AND MAY VOTE
35 AT THE MEETING; and

36 (2) The purpose of the meeting, if:

- 1 (i) The meeting is a special meeting; or
2 (ii) Notice of the purpose is required by any other provision of this
3 article.

4 (c) (I) For purposes of this section, notice is given to a stockholder when it
5 is:

- 6 ~~(I)~~ (I) Personally delivered to the stockholder;
7 ~~(II)~~ (II) Left at the stockholder's residence or usual place of business;
8 ~~(III)~~ (III) Mailed to the stockholder at the stockholder's address as it
9 appears on the records of the corporation; or

10 ~~(IV)~~ (IV) Transmitted to the stockholder by AN electronic [mail]
11 TRANSMISSION to any [electronic mail] address OR NUMBER of the stockholder [or
12 by any other electronic means] AT WHICH THE STOCKHOLDER RECEIVES
13 ELECTRONIC TRANSMISSIONS.

14 (2) IF A CORPORATION HAS RECEIVED A REQUEST FROM A
15 STOCKHOLDER THAT NOTICE NOT BE SENT BY ELECTRONIC TRANSMISSION, THE
16 CORPORATION MAY NOT PROVIDE NOTICE TO THE STOCKHOLDER BY ELECTRONIC
17 TRANSMISSION.

18 (D) (1) AN AFFIDAVIT OF THE SECRETARY, AN ASSISTANT SECRETARY, THE
19 TRANSFER AGENT, OR OTHER AGENT OF THE CORPORATION THAT NOTICE HAS BEEN
20 GIVEN BY A FORM OF ELECTRONIC TRANSMISSION, IN THE ABSENCE OF ACTUAL
21 FRAUD, SHALL BE PRIMA FACIE EVIDENCE OF THE FACTS STATED IN THE AFFIDAVIT.

22 (2) NOTICE GIVEN BY ELECTRONIC TRANSMISSION SHALL BE
23 CONSIDERED INEFFECTIVE IF:

24 (I) THE CORPORATION IS UNABLE TO DELIVER TWO CONSECUTIVE
25 NOTICES; AND

26 (II) THE INABILITY TO DELIVER THE NOTICES BECOMES KNOWN
27 TO THE SECRETARY, AN ASSISTANT SECRETARY, THE TRANSFER AGENT, OR OTHER
28 PERSON RESPONSIBLE FOR THE GIVING OF NOTICE.

29 (3) THE INADVERTENT FAILURE TO DELIVER NOTICE UNDER
30 PARAGRAPH (2) OF THIS SUBSECTION DOES NOT INVALIDATE ANY MEETING OR
31 OTHER ACTION.

32 [(d)] (E) Whenever this article or the charter or bylaws of a corporation
33 require notice of [the time, place, or purpose of] a meeting of the stockholders, each
34 person who is entitled to the notice waives notice if the person:

1 (1) Before or after the meeting [signs a] DELIVERS A WRITTEN waiver
2 OR A WAIVER BY ELECTRONIC TRANSMISSION [of the notice] which is filed with the
3 records of stockholders meetings; or

4 (2) Is present at the meeting in person or by proxy.

5 [(e)] (F) The charter or bylaws may require any stockholder proposing a
6 nominee for election as a director or any other matter for consideration at a meeting
7 of the stockholders to provide advance notice of the nomination or proposal to the
8 corporation of not more than:

9 (1) 90 days before the date of the meeting; or

10 (2) In the case of an annual meeting, 90 days before the first anniversary
11 of:

12 (i) The mailing date of the notice of the preceding year's annual
13 meeting; or

14 (ii) The preceding year's annual meeting; or

15 (3) Another time specified in the charter or bylaws.

16 2-504.1.

17 (A) SUBJECT TO § 2-504(D) OF THIS SUBTITLE, ANY NOTICE GIVEN BY A
18 CORPORATION TO A STOCKHOLDER UNDER THIS ARTICLE OR THE CHARTER OR
19 BYLAWS OF THE CORPORATION IS EFFECTIVE IF GIVEN BY A SINGLE NOTICE, IN
20 WRITING OR BY ELECTRONIC TRANSMISSION, TO ALL STOCKHOLDERS WHO SHARE
21 AN ADDRESS IF:

22 (1) THE CORPORATION GIVES NOTICE, IN WRITING OR BY ELECTRONIC
23 TRANSMISSION, TO THE STOCKHOLDER OF ITS INTENT TO GIVE A SINGLE NOTICE;
24 AND

25 (2) THE STOCKHOLDER:

26 (I) CONSENTS TO RECEIVING A SINGLE NOTICE; OR

27 (II) FAILS TO OBJECT IN WRITING WITHIN 60 DAYS AFTER THE
28 CORPORATION GIVES NOTICE TO THE STOCKHOLDER OF ITS INTENT TO GIVE A
29 SINGLE NOTICE.

30 (B) A STOCKHOLDER MAY REVOKE CONSENT GIVEN UNDER SUBSECTION (A)
31 OF THIS SECTION, WHETHER AFFIRMATIVE OR IMPLIED, BY WRITTEN NOTICE TO
32 THE CORPORATION.

33 (C) THIS SECTION DOES NOT LIMIT THE MANNER IN WHICH A CORPORATION
34 OTHERWISE MAY GIVE NOTICE TO STOCKHOLDERS.

1 2-505.

2 (a) Except as provided in subsection (b) of this section, any action required or
3 permitted to be taken at a meeting of THE stockholders may be taken without a
4 meeting if a unanimous [written] consent which sets forth the action [and] is:

5 (1) [signed] GIVEN IN WRITING OR BY ELECTRONIC TRANSMISSION by
6 each stockholder entitled to vote on the matter; AND

7 (2) [is filed] FILED IN PAPER OR ELECTRONIC FORM with the records of
8 stockholders meetings.

9 (b) Unless the charter requires otherwise, the holders of any class of stock
10 other than common stock, entitled to vote generally in the election of directors, may
11 take action or consent to any action by DELIVERING A [the written] consent IN
12 WRITING OR BY ELECTRONIC TRANSMISSION of the stockholders entitled to cast not
13 less than the minimum number of votes that would be necessary to authorize or take
14 the action at a stockholders meeting if the corporation gives notice of the action to
15 each stockholder not later than 10 days after the effective time of the action.

16 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
17 June 1, 2003.